

I. INTRODUCTION

The complaint alleges that The Arizona Sports Foundation, dba The Fiesta Bowl ("Fiesta Bowl"), and certain individuals violated 2 U.S.C. §§ 441b(a) and 441f of the Federal Election Campaign Act of 1971, as amended (the "Act"), by making prohibited contributions in the names of others to various federal political committees. The complaint further alleges that the Fiesta Bowl violated 2 U.S.C. § 441b(a) by using corporate resources and facilities to host fundraising events for federal candidates and committees. In response, the Fiesta Bowl concedes that it made such prohibited contributions and permitted its facilities and resources to be used to support candidate fundraising activity, and requests that the Commission either dismiss or conciliate the matter. The individual respondents generally deny the allegations, decline to provide further information, and/or request dismissal.

As set forth below, the Fiesta Bowl appears to have made corporate contributions in the names of others by reimbursing its officers, employees, and other persons for campaign contributions. The individual respondents appear to have consented to and/or assisted in the making of prohibited contributions, and/or allowed their names to be used to effect the contributions. The available information further suggests that certain respondents may have knowingly and willfully violated the Act. We recommend that the Commission find reason to believe that (1) the Fiesta Bowl knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by making corporate contributions in the names of others; (2) former Fiesta Bowl President and CEO John Junker knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by consenting to the use of corporate funds to make contributions in the names of others, by assisting in making contributions in the names of others, and by allowing his name to be used to effect such contributions; (3) former officer Natalie Wisneski knowingly and willfully violated 2 U.S.C.

1 §§ 441b(a) and 441f by consenting to the use of corporate funds to make contributions in the
2 names of others, by assisting in making contributions in the names of others, and by allowing her
3 name to be used to effect such contributions; and (4) former officer Shawn Schoeffler violated
4 2 U.S.C. §§ 441b(a) and 441f by consenting to the use of corporate funds to make contributions
5 in the names of others, by assisting in making contributions in the names of others, and by
6 allowing his name to be used to effect such contributions. Regarding the other individual
7 respondents, who are lower-level employees and employee spouses, we recommend that the
8 Commission take no action at this time. We recommend that the Commission dismiss
9 allegations of corporate facilitation and enter into pre-probable cause cancellation with the Fiesta
10 Bowl as to violations related to corporate reimbursements. As to the individual respondents, we
11 recommend that the Commission authorize compulsory process.¹

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Background**

14 The Fiesta Bowl is registered as a non-profit corporation in Arizona and is organized
15 under section 501(c)(3) of the Internal Revenue Code. The Fiesta Bowl states that through
16 its creation and sponsorship of the Festival of College Football – which includes numerous
17 Arizona events such as the annual Tostitos Fiesta Bowl and the Insight Bowl college football
18 games – it “promote[s] volunteerism, athletic achievement and higher education.”
19 <http://www.fiestabowl.org/index.php/fiestabowl/about>.

¹ These activities are currently being investigated by the Department of Justice and the Arizona Attorney General. As discussed further below, on November 15, 2011, Wisneski was indicted in the U.S. District Court for the District of Arizona on charges that relate, in part, to the alleged contribution reimbursements.

1 In mid-December 2009, following an article in THE ARIZONA REPUBLIC reporting that
2 Fiesta Bowl employees may have been reimbursed for political contributions, the Fiesta Bowl
3 retained outside counsel to conduct an investigation (the "First Investigation"). See Craig Harris,
4 *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, THE ARIZONA REPUBLIC,
5 December 18, 2009. After interviewing several employees, counsel reported to the Board of
6 Directors that there was no credible evidence to support the reimbursement allegations. In
7 October 2010, after receiving information from a Fiesta Bowl employee contradicting the First
8 Investigation's findings, the Chairman of the Board of Directors of the Fiesta Bowl formed a
9 Special Committee to re-investigate the reimbursement allegations and to examine the First
10 Investigation. The Special Committee retained another law firm and empowered it with full
11 authority to investigate all potential violations of internal policies, state laws, and federal laws
12 (the "Second Investigation"). The Second Investigation included interviews with 52 individuals
13 and the review of over 10,000 pages of documents, and culminated in a 276-page Final Report of
14 Counsel to the Special Committee of the Board of Directors of the Fiesta Bowl ("Final Report").
15 On March 21, 2011, the Fiesta Bowl released a public version of the Final Report, minus all
16 attachments and source materials (e.g., interview statements). See
17 http://www.fiestabowl.org/_documents/reports/Fiesta_Bowl_Final_Public.pdf.

18 The Final Report concluded that since 2000, the Fiesta Bowl has used corporate funds to
19 reimburse 21 individuals for at least \$46,539 in local, state, and federal campaign contributions.
20 The Final Report also concluded that the Fiesta Bowl may have hosted fundraising events for
21 federal and nonfederal candidates on its premises without charge.

22 Relying on information in the Final Report, the complaint alleges that the Fiesta Bowl
23 and 13 individuals (1) violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(i) by "reimbursing

1 employees for contributions made to federal candidates and committees,” and (2) violated
2 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) and (f) by “reimbursing employees and others with
3 corporate funds for contributions made to federal candidates and committees and by using
4 corporate resources and facilities to raise funds for federal candidates and committees.”

5 Complaint at 6-7. The complaint provides a list of the federal contributions it asserts were
6 reimbursed by the Fiesta Bowl after January 1, 2006. *Id.* at 5-6.

7 Based on our review of the Final Report, the responses to the complaint, the
8 Commission’s electronic contributor search index, and other information, we have uncovered
9 four additional post-January 2006 contributions and three pre-2006 contributions to federal
10 committees that, while not listed in the complaint, appear to have been reimbursed by the Fiesta
11 Bowl. We have constructed a chronological chart showing all 29 federal contributions at issue,
12 totaling \$30,400. *See* Attachment 1.

13 Regarding the allegation of corporate facilitation, the complaint states that the Final
14 Report found that the Fiesta Bowl used corporate resources and facilities to host a fundraising
15 event for former Arizona Congressman J.D. Hayworth on or about October 18, 2006. Complaint
16 at 6. In addition, based on “information and belief,” the complaint alleges that the Fiesta Bowl
17 used corporate resources to organize a fundraising event for Straight Talk America (Senator John
18 McCain’s leadership PAC) on or about April 28, 2006, and two fundraising events for Senator
19 McCain on or about March 8, 2007, and March 28, 2008. *Id.*

20 The Fiesta Bowl acknowledges that it reimbursed employees who made federal
21 contributions and that it used its facilities and resources for candidate fundraising activity, *see*
22 Fiesta Bowl Response at 2-3, but contends that the participation of its current employees in the
23 misconduct “was at the direction of others, and they acted without knowledge of its

1 impropriety.” *Id.* at 3. The response emphasizes that the Fiesta Bowl leadership involved in the
2 violations is no longer employed by the Fiesta Bowl, including former president and CEO John
3 Junker, former COO Natalie Wisneski, and former Senior Vice President of Marketing Jay
4 Fields. *Id.* The response further states that the Fiesta Bowl sent letters requesting refunds of
5 improperly reimbursed contributions to the recipient campaigns, and notes that the Fiesta Bowl
6 has reformed its internal reimbursement practices to ensure that such activity does not reoccur in
7 the future. *Id.* at 6. In addition, the Board of the Fiesta Bowl states it “self-reported the Special
8 Committee’s findings to the Arizona Attorney General’s Office and the Internal Revenue
9 Service.” *Id.* at 1. The response requests that the Commission either dismiss or conciliate the
10 matter.

11 By contrast, the individual respondents either deny the allegations, request dismissal, or
12 decline to provide further information.

13 **B. How the Fiesta Bowl Reimbursed Contributions**

14 The Special Committee’s Final Report contains a detailed account of how the
15 contributions at issue were solicited and reimbursed, based primarily on interviews with Fiesta
16 Bowl employees who served as conduits for the contributions. Anthony Aguilar, Director of
17 Community and Corporate Relations, stated that contributions were typically requested by
18 Junker, Wisneski, and former Fiesta Bowl consultant Gary Husk. Final Report at 35. Kelly
19 Keogh, who served as Executive Manager for Junker during the period at issue, stated that an
20 email request saying “we need to get so many checks” sometimes would be sent from Husk’s
21 office to Wisneski, Junker, and/or Aguilar, and then a copy of the email would be sent “to the
22 rest of us.” *Id.* Some employees were reluctant to contribute. For example, Peggy Eyanson,
23 Director of Business Operations, stated that she first refused to make a \$1,000 contribution at the

1 request of Wisneski's assistant Monica Simental, but made the contribution only after being
2 promised reimbursement. *Id.* at 36.

3 The primary means of reimbursing contributors appears to have been through so-called
4 "bonus" checks handed out by Wisneski at Junker's direction. *Id.* at 37.

5 He [Junker] would just say "I need contributions. We need contributions
6 to Friends of [U.S. Senator] Jon Kyl," or, "the check needs to be made out
7 to Friends of," whoever, like [Arizona State Senator] Russell Pearce.
8 Later, he started using the term bonus and would say "Did you bonus staff
9 out?" . . . "John would say, 'Did you bonus staff out and did you put some
10 other staff members in there – put [Director of Sales] Erika [Pumphrey] in
11 there,' – people that didn't contribute – to cover it. Sometimes he would
12 be pretty rude and adamant and tell me, "Bonus the staff," because I
13 wasn't doing it and people must have been telling him that they weren't
14 getting their reimbursements. It would be like a constant pounding on me
15 to bonus the staff and I knew he was only talking about the ones that were
16 getting the campaign reimbursements.

17
18 *Id.* at 39.

19 According to Wisneski, Junker asked her to come up with "pretextual reasons" for the
20 bonuses, but that she had a difficult time doing so. *Id.* Wisneski stated, for example, that Junker
21 instructed her to simultaneously give bonuses to individuals who had not contributed in order to
22 disguise the purpose of the reimbursements.

23 Eyanson stated that the checks were written from a manual checkbook that was typically
24 used for non-payroll items such as paying bills from independent contractors. *Id.* at 38. She and
25 others stated that the reimbursement amounts were usually "grossed up" to account for state and
26 federal taxes. *Id.* at 40. The checks were usually signed by Wisneski after Eyanson filled out the
27 date, amount, and payee information. *Id.* Eyanson, Keogh, and former officer Shawn Schoeffler
28 stated that some of the contributions for which they were reimbursed were made in the names of
29 their spouses. *Id.* at 42. Although the Final Report contains few details as to how the payments

1 were documented as bonuses, it includes copies of checks and spreadsheets on which the word
2 "Bonus" was written by hand in the "checkbook memo" space.² *Id.* at 41, 57, 61, 62, 144.

3 In addition to individual bonus checks, another means of reimbursement included giving
4 a single employee a large bonus check from which that employee could then reimburse other
5 employees for their contributions. Wisneski recalled that, in or around 2003, former CFO Stan
6 Laybourne said to her: "How this is going to work is I'm going to be paid a bonus, like \$10,000
7 or \$15,000, and then I'm going to pay all of you back." *Id.* at 43. The Final Report includes a
8 copy of a \$15,000 check in the manual check register made out to Laybourne dated January 12,
9 2005. *Id.* at 45. Eyanson stated that she believed the check may have been for contribution
10 reimbursements based on handwritten figures on the check stub, which Eyanson thought could
11 be reimbursement amounts. *Id.* at 44. Wisneski stated that after Laybourne was given the
12 \$15,000 bonus check, she and Junker contacted Husk to see if Wisneski could also receive a
13 "bonus" that she could use to reimburse other employees for their campaign contributions. *Id.* at
14 49. According to Wisneski, Husk replied, "Yeah, it's done all the time." *Id.* Wisneski said she
15 then received a \$5,000 check for the purpose of reimbursing other contributors. Husk, for his
16 part, denied that he ever told anyone that the Fiesta Bowl could make reimbursements for
17 campaign contributions, and he specifically denied that he spoke to Junker and Wisneski about
18 whether Wisneski could receive a bonus that should be used to fund the reimbursements of other
19 employees. *Id.* at 49-50.

20 Eyanson, however, stated that Wisneski told her in late 2006 that Anthony Aguilar was to
21 receive a \$15,000 bonus in order to reimburse contributors in cash. *Id.* at 46. Aguilar confirmed
22 that he received a \$15,000 check in October 2006 for "reimbursement purposes." *Id.* at 47. His

² In some cases, there appear to have been no checkbook notations for the reimbursement checks. *Id.* at 42.

1 bank records show that he withdrew \$6,484 a few days after depositing the check, which he
2 recalled using to reimburse contributors, but he could not recall whether he gave out cash or
3 wrote personal checks. *Id.* Aguilar said it was possible he gave some of the money to former
4 Fiesta Bowl officers Fields or Schoeffler for further distribution. *Id.* at 48.

5 Some individuals interviewed during the Second Investigation stated that not all of the
6 reimbursements were made in the form of "bonus" checks. Schoeffler stated that he was
7 sometimes reimbursed through bonus checks, and at other times through an expense check. *Id.*
8 at 50. For example, on June 30, 2009, Schoeffler contributed \$1,000 to Senator McCain's
9 campaign and then received a \$4,000 check on August 25, 2009. Schoeffler stated that \$3,000 of
10 this amount was to be used as a down payment on a car, and the remaining \$1,000 was a
11 reimbursement for his contribution to the McCain campaign. *Id.*

12 Many of the federal reimbursements acknowledged by the Fiesta Bowl were for
13 contributions made by Junker and his wife. See Attachment 1. According to Wisneski, in early
14 2007, before Junker was to receive a \$20,000 bonus, he showed her a list of campaign
15 contributions that he and his wife had made and for which they needed to be reimbursed. Final
16 Report at 58. Wisneski said she was upset about Junker's request, but that she asked Eyanson
17 for the amount Junker would receive if the \$20,000 was grossed up to cover taxes. Wisneski
18 recalled that the increased amount, \$11,948.88, approximated the sum of the contributions on
19 Junker's list, so she instructed Eyanson to cut a bonus check to Junker in the amount of
20 \$31,948.88 (\$20,000 + \$11,948.88). The Final Report notes that the total of all federal and
21 nonfederal contributions Junker and his wife gave from 2000 through the date of the check
22 (February 26, 2007) was \$11,302. *Id.*

1 Wisneski reported that Junker also complained about not being reimbursed for \$2,100
2 that he and his wife each contributed to Senator McCain's campaign on March 8, 2007.
3 Wisneski said she felt uncomfortable but told Eyanson to write a check; Junker then received a
4 \$4,200 bonus check that Eyanson identified as a likely reimbursement. *Id.* at 59-60. The check
5 register contains the letters "MC" in Eyanson's handwriting, which Eyanson believes stood for
6 "McCain." *Id.* at 60.

7 Junker agreed to be interviewed during the Second Investigation, but refused to answer
8 any questions about the alleged reimbursements. *Id.* at 8. The Final Report does not explain
9 why Junker refused to provide answers; it states only that the Board of Directors placed him on
10 administrative leave after he failed to comply with the Board's written directives to "answer all
11 [of counsel's] questions" *Id.*

12 The Final Report does not provide any excerpts of interviews or instances in which those
13 involved in the reimbursements admitted they knew such conduct was illegal; rather, the
14 reimbursed contributors appear to have said during the Second Investigation that they lacked
15 such knowledge until they read the December 2009 article in THE ARIZONA REPUBLIC, which
16 alleged that Fiesta Bowl employees were reimbursed for political contributions and that such
17 activity could violate state and federal laws. *Id.* at 51-52.

18 **C. Legal Analysis**

19 A corporation is prohibited from making contributions in connection with any election of
20

1 any candidate for federal office. *See* 2 U.S.C. § 441b(a).³ In addition, section 441b(a) prohibits
2 any officer or director of any corporation from consenting to any contribution by the corporation.
3 The Act also provides that no person shall make a contribution in the name of another person or
4 knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. Any
5 candidate or political committee who knowingly accepts or receives any contribution prohibited
6 by 2 U.S.C. § 441f also violates the Act. *Id.*

7 In addition, “no person shall . . . knowingly help or assist any person in making a
8 contribution in the name of another.” 11 C.F.R. § 110.4(b)(1)(iii). “[K]nowingly helping or
9 assisting” applies to “those who initiate or instigate or have some significant participation in a
10 plan or scheme to make a contribution in the name of another” Explanation and
11 Justification for 11 C.F.R. § 110.4 at 54 Fed. Reg. 34,105 (Aug. 17, 1989). A contribution made
12 in the name of another results when the source of a contribution solicits a conduit to transmit
13 funds to a campaign in the conduit’s name, subject to the source’s promise to advance or
14 reimburse the funds to the conduit. *See U.S. v. O’Donnell*, 608 F.3d 546, 549 (9th Cir. 2010).
15 And it is hornbook law that a principal is liable for the acts of its agents committed within the
16 scope of his or her employment. RESTATEMENT (THIRD) OF AGENCY § 7.07; *U.S. v. Sun-*
17 *Diamond Growers of California*, 138 F.3d 961(D.C. Cir. 1998) (criminal convictions affirmed

³ Recently, a federal district court concluded that 2 U.S.C. § 441b(a)’s prohibition on corporate contributions was unconstitutional. *See U.S. v. Danielczyk*, 788 F.Supp.2d 472 (E.D.Va. May 26, 2011) (No. 1:11CR85 JCC), *Opinion Clarified on Denial of Reconsideration by U.S. v. Danielczyk*, — F.Supp.2d —, 2011 WL 2268063 (E.D.Va. June 7, 2011) (No. 1:11CR85 JCC). On June 16, 2011, the government appealed the district court’s decision to the Fourth Circuit. The reasoning adopted by the district court has recently been rejected by the Ninth Circuit (whose jurisdiction includes Arizona, where the Fiesta Bowl is based), *see Thalheimer v. City of San Diego*, 645 F.3d 1109, 1124-27 (9th Cir. June 9, 2011), and has no basis in the Supreme Court’s decision in *Citizens United v. FEC*, 130 S.Ct. 876 (2010). *See* Plaintiff-Appellant United States’ Opening Brief in *U.S. v. Danielczyk*, No. 11-4667, at 26-29 (4th Cir. filed Oct. 19, 2011) (*Citizens United* did not undermine, much less overrule, longstanding precedent reviewing contribution limits more permissively than independent expenditures). *See also Preston v. Leake*, — F.3d —, 2011 WL 5320750 (4th Cir. Nov. 7, 2011) (No. 10-2294); *Green Party of Conn. v. Garfield*, 616 F.3d 189, 199 (2^d Cir. 2010); *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 640 F.3d 304, 316-19 (8th Cir. May 16, 2011) (post-*Citizens United* cases upholding the constitutionality of state laws banning political contributions from, *inter alia*, lobbyists, state contractors, and corporations).

1 against Sun-Diamond in connection with a corporate contribution reimbursement scheme carried
2 out by officer).

3 The Act prescribes additional penalties for violations that are knowing and willful. *See*
4 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge
5 that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress*
6 *Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be
7 established "by proof that the defendant acted deliberately and with knowledge that the
8 representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence
9 does not have to show that the defendant had specific knowledge of the regulations; an inference
10 of knowing and willful conduct may be drawn from the defendant's scheme to disguise the
11 source of funds used in illegal activities. *Id.* at 213-15.

12 Based on the available information, the Fiesta Bowl appears to have made corporate
13 contributions to federal political committees in the names of others, and the individual
14 respondents may have allowed their names to be used to effect such contributions. The Fiesta
15 Bowl's officers may have additional liability for consenting to the making of corporate
16 contributions and participating in the reimbursement scheme.

17 **1. The Fiesta Bowl Reimbursed Contributors with Corporate Funds**

18
19 The Fiesta Bowl admits that it reimbursed contributors with corporate funds and "concurs
20 in the findings of the Final Report." Fiesta Bowl Response at 3. The Fiesta Bowl acknowledges
21 that it reimbursed 27 federal contributions totaling \$28,400, as each of these contributions is
22 included in a spreadsheet of federal and nonfederal contributions – entitled "Political
23 Contributions Reimbursed by the Fiesta Bowl" – attached to the Fiesta Bowl's response to the

1 complaint.⁴ Fiesta Bowl Response at Tab 12. Based on these admissions, the Fiesta Bowl
2 violated 2 U.S.C. §§ 441b(a) and 441f by reimbursing campaign contributions with corporate
3 funds.

4 The fact that the Fiesta Bowl, acting through its officers and other employees, disguised
5 the reimbursements principally as bonuses over the course of several years strongly suggests,
6 moreover, that it knew the reimbursements were unlawful and attempted to conceal them.⁵

7 The Fiesta Bowl's flawed First Investigation, during which witnesses appear to have been
8 carefully chosen and coached so as not to reveal the reimbursements, also suggests that its
9 conduct was knowing and willful. During the First Investigation, outside counsel selected by the
10 Fiesta Bowl relied on former Fiesta Bowl consultant Husk to set up the interviews. Final Report
11 at 82. During the screening for the interviews, four employees stated that they informed Husk
12 they were aware of contribution reimbursements, yet they were not interviewed in the First
13 Investigation. *Id.* at 83.

14 Eyanson said she told Husk that she had been reimbursed and that she was "not going to
15 lie under oath." *Id.* at 89. She said that Husk replied, "We are going to steer the investigation
16 another way and we are not going to let them talk to you." *Id.* Wisneski recalled being coached
17 by Husk with a list of interview questions: "We went through them. And I remember . . . I

⁴ As discussed below, other information indicates that two additional contributions were reimbursed that were not included in the Fiesta Bowl's spreadsheet, increasing the amount at issue to \$30,400.

⁵ In MUR 5758 (O'Donnell), the Commission found probable cause to believe that Pierce O'Donnell knowingly and willfully violated section 441f, in part, based on conduct that including disguising the source of contributions by coding reimbursement checks as bonuses. *See* General Counsel's Report dated February 15, 2007 at 6, and Commission Certification dated February 21, 2007. In MUR 5818 (Fieger), the Commission found reason to believe that the respondents knowingly and willfully violated section 441f by reimbursing the contributions of employees in the form of bonuses. *See* First General Counsel's Report dated August 10, 2006 at 7, and Commission Certification dated September 19, 2006. In MUR 6143 (Galen Capital Group), the Commission found reason to believe that the respondents knowingly and willfully violated section 441f where the reimbursements were similarly disguised — as corporate expenses. *See* First General Counsel's Report dated June 20, 2008 at 8-9, and Commission Certification dated December 3, 2008.

1 gave an answer, and he said 'why don't you answer it this way.'" *Id.* at 84. Wisneski recalled
2 that Junker also participated in discussions about who should be interviewed during the First
3 Investigation, suggesting the names of individuals who had not been reimbursed. *Id.* at 85.
4 Kelly Keogh also indicated that Husk coached her prior to her interview. *Id.* at 86-87.

5 Although Husk denied these assertions, *id.* at 87-90, given the consistency of the contrary
6 accounts of several witnesses, it appears that Husk and Junker may have intentionally
7 manipulated the First Investigation to ensure that the Fiesta Bowl's reimbursement practices
8 would not be revealed and would instead be covered up.

9 In addition, in late 2009 and early 2010, after the Secretary of State for Arizona requested
10 information gathered in the First Investigation, it appears that Fiesta Bowl employees falsified
11 documents so as to prevent State officials from uncovering the scheme. The Final Report states,
12 for example, that the Fiesta Bowl provided the Secretary of State with an incomplete spreadsheet
13 of contributions, bonuses, and expenses reimbursements. *Id.* at 132. Wisneski stated that Husk
14 and Junker were both "relieved" that the spreadsheet did not include Junker's 2007 "bonus" of
15 \$4,200 that she and Eyanson alleged was a reimbursement for the Junkers' two \$2,100
16 contributions. *Id.* at 142.

17 Based on the above information, we recommend that the Commission find reason to
18 believe that The Arizona Sports Foundation, dba The Fiesta Bowl, knowingly and willfully
19 violated 2 U.S.C. §§ 441b(a) and 441f.

20 2. John and Susan Junker

21 The Junkers submitted separate but identical responses to the complaint, declining to
22 respond based on their right to remain silent under the Fifth Amendment. J. Junker Response at
23 1, S. Junker Response at 1. As noted above, John Junker agreed to be interviewed by the Special

1 Committee's counsel but refused to answer any questions relating to campaign contributions or
2 allegations of reimbursements. Final Report at 8.

3 The information in the Final Report suggests that the Fiesta Bowl's reimbursement
4 practices were likely initiated by John Junker in his capacity as President and CEO of the Fiesta
5 Bowl. The Final Report provides several instances of Junker soliciting political contributions
6 and then directing that the contributions made by him and others be reimbursed with corporate
7 funds. In addition, his instruction that the reimbursements be disguised as bonuses suggests
8 knowing and willful conduct. He appears to have taken additional measures to disguise the
9 reimbursements, including by directing that non-contributors get bonuses at the same time
10 contributors received bonuses as reimbursements. Accordingly, we recommend that the
11 Commission find reason to believe that John H. Junker knowingly and willfully violated
12 2 U.S.C. §§ 441f and 441b(a) by consenting to the use of corporate funds to make contributions
13 in the names of others, by assisting in making contributions in the names of others, and by
14 allowing his name to be used to effect such contributions.

15 We have no information at this time as to the nature of Susan Junker's involvement in
16 any of the alleged activity. We recommend that the Commission take no action as to Susan
17 Junker at this time. Should we discover information indicating that Ms. Junker was actively
18 involved in the reimbursement scheme, we will make appropriate recommendations at that time.⁶
19

⁶ See, e.g., MUR 5871 (Noe) (Commission made no findings and took no action against family member conduits except admonishment); MUR 5955 (Valdez) (Commission took no action as to conduit respondents); MUR 5504 (Karoly) (Commission took no action as to reimbursed spouses).

1 **3. Fiesta Bowl Officers and Consultant Gary Husk**

2 By accepting reimbursement from the Fiesta Bowl for their federal contributions, certain
3 former Fiesta Bowl officers appear to have consented to the making of corporate contributions,
4 assisted in the making of contributions in the names of others, and allowed their names to be
5 used to effect contributions in the name of another.⁷ Moreover, the Final Report concludes that
6 Husk, a Fiesta Bowl consultant, was a driving force in the unlawful scheme.

7 **a. Natalie Wisneski, former Chief Operating Officer**

8 Ms. Wisneski, who filed a joint response with her husband Richard, states that she
9 cooperated fully with the Special Committee's counsel and was interviewed on six different
10 occasions. The response states that Wisneski was "entirely honest and forthright in the
11 interviews and with the information she provided," and her cooperation "proved invaluable" to
12 the Second Investigation. Wisneski Response at 2. The response asserts that, given that three
13 separate Government agencies are already investigating and considering criminally prosecuting
14 this matter, it would be "redundant" and "not productive" for the Commission to take action. *Id.*
15 at 1.

16 As noted earlier, Wisneski has been recently indicted in federal court in Arizona on
17 charges that relate, in part, to the alleged contribution reimbursements at issue. *See* Indictment,
18 *U.S. v. Wisneski*, No. 2:11-cr-02216-JAT (D. Ariz. filed Nov. 15, 2011). The criminal indictment
19 – supported by information about Wisneski's activities consistent with the information in the
20 Final Report – states, *inter alia*, that she "knowingly and willfully caused and caused to be made

⁷ See MUR 6223 (St. John Properties) (Commission found reason to believe that six corporate vice presidents violated 2 U.S.C. §§ 441b(a) and 441f by consenting to the making of corporate contributions and allowed their names to be used to effect contributions in the name of another; Commission took no further action after investigation revealed that most did not consent); MUR 5818 (Fieger) (Commission found probable cause to believe that a partner who was Secretary/Treasurer of a law firm violated 2 U.S.C. §§ 441b(a) and 441f); MUR 5765 (Crop Production Services, Inc.) (Commission found reason to believe that a vice president and three managers violated 2 U.S.C. § 441f as conduits).

1 contributions in the names of others" totaling more than \$10,000 in 2007, \$2,000 in 2008, and
2 \$2,000 in 2009. *Id.* at 10-12.

3 Although it appears that the Second Investigation relied more heavily on the statements
4 of Wisneski than on the statements of any other witness, and that she may have engaged in the
5 unlawful activities under pressure from John Junker or Gary Husk, *id.* at 39, 142-43, she also
6 appears to have played a significant role in the soliciting, collecting, and reimbursing of
7 campaign contributions – including, for example, signing checks that were disguised as bonuses
8 and being reimbursed for at least two federal contributions.⁸ Final Report at 37-40;
9 Attachment 1.

10 We therefore recommend that the Commission find reason to believe that Natalie
11 Wisneski knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by consenting to the
12 use of corporate funds to make contributions in the names of others, by assisting in making
13 contributions in the names of others, and by allowing her name to be used to effect such
14 contributions. Consistent with the Commission's usual practice regarding conduit spouses, *see*
15 footnote 6, we recommend that the Commission take no action as to Richard Wisneski at this
16 time.

17 **b. Shawn Schoeffler, former Vice President of Media Relations**

18 Shawn Schoeffler appears to have been reimbursed for three federal contributions with
19 corporate funds. *See* Attachment 1. His response asserts that he did not participate in the
20 lobbying or political activities of Fiesta Bowl management and that, to the extent he engaged in
21 conduct that was "noncompliant" with the Act, "such conduct was unknowing and the product of
22 a singular motivation: comply with the demands of then-Director of the Fiesta Bowl, John

⁸ The Fiesta Bowl's reimbursement spreadsheet did not include a contribution from Wisneski to the McCain campaign on June 30, 2009; however, information in her indictment suggests that the Fiesta Bowl reimbursed this contribution as "Part of [Wisneski's] Bonus." Indictment at 12.

1 Junker, whom he trusted to make lawful and reasonable management decisions.” Schoeffler
2 Response at 1-2.

3 The Final Report, however, concluded that Schoeffler was “non-cooperative,” and some
4 of the information in the Final Report suggests he may have participated in soliciting and
5 reimbursing contributions other than his own. According to the Final Report, for example, his
6 subordinate Gina Chappin stated that Schoeffler asked her to make a contribution, telling her she
7 would be reimbursed and that she should not discuss campaign donations with others in the
8 office. Final Report at 8, 36. But Chappin also said she believed Schoeffler was acting at the
9 direction of Junker. *Id.* Although we do not recommend knowing and willful findings at this
10 time, we believe that an investigation is required to resolve this issue. See MUR 6249 (Pletz),
11 MUR 6223 (St. John). We therefore recommend that the Commission find reason to believe that
12 Shawn Schoeffler violated 2 U.S.C. §§ 441b(a) and 441f by consenting to the use of corporate
13 funds to make contributions in the names of others, by assisting in making contributions in the
14 names of others, and by allowing his name to be used to effect such contributions.

15 **c. Jay Fields, former Senior Vice President of Marketing**

16 The complaint alleges that Fields, former Senior Vice President of Marketing, was
17 reimbursed with corporate funds for two federal contributions, a \$600 contribution to J.D.
18 Hayworth on October 18, 2006, and a \$1,000 contribution on March 28, 2008, to the McCain
19 campaign. The Final Report notes that Fields denied any knowledge of a campaign contribution
20 reimbursement scheme and thought that the payments to him were legitimate bonuses. Final
21 Report at 48, 63.

22 Fields’s response argues that there is no evidence in the complaint, or in the Final Report
23 referenced therein, that he was reimbursed for his contributions to Hayworth and McCain.

1 Although the Final Report concluded that two of Fields's nonfederal contributions may have
2 been reimbursed, there was insufficient information to conclude that his federal contributions
3 were reimbursed, *id.* at 62-63, and the Fiesta Bowl's response did not list those contributions in
4 its reimbursement spreadsheet. But information in Wisneski's criminal indictment suggests that
5 Fields's \$1,000 contribution to the McCain campaign in 2008 may have been reimbursed by the
6 Fiesta Bowl, *see* Indictment at 12, and because an investigation may shed more light as to his
7 possible role in the unlawful scheme, we recommend that the Commission take no action as to
8 Jay Fields at this time.

9 **d. Former Consultant Gary Husk**

10 The complaint, responses, and the Final Report do not contain information that Gary
11 Husk made any political contributions that were reimbursed, but the available information
12 suggests that he may have assisted and played a central role in the Fiesta Bowl's reimbursement
13 scheme. As a lobbyist and consultant for the Fiesta Bowl (the Final Report describes him as "an
14 attorney and public affairs professional on retainer with the Fiesta Bowl," *id.* at 11), Husk
15 appears to have been a driving force behind the Fiesta Bowl's campaign contributions and played
16 a core role in the failed First Investigation that found no "credible" evidence that any
17 contributions were reimbursed.

18 According to the Final Report, Husk assisted in soliciting and collecting contributions
19 from Fiesta Bowl employees, *id.* at 35-37, and the information suggests he was aware that the
20 reimbursement activity was unlawful and attempted to cover up the scheme by manipulating the
21 First Investigation. As noted above, Wisneski said that when she sought Husk's advice as to
22 whether she could get a "bonus" to reimburse others for their campaign contributions, he replied,

1 "Yeah, it's done all the time." *Id.* at 49. Wisneski said she then received a \$5,000 check for the
2 purpose of reimbursing contributors. *Id.*

3 The Final Report notes that Husk denied that he ever told anyone that the Fiesta Bowl
4 could reimburse anyone for a campaign donation, and he specifically denied that he spoke to
5 Junker and Wisneski about whether Wisneski could receive a bonus and then reimburse others
6 from that bonus money. *Id.* at 49-50. Husk denied that he told them "everybody does it," and
7 further stated that he knew such activity was illegal and that he would never advise a client to
8 break the law. *Id.* at 50.

9 However, given the consistent contrary accounts regarding Husk's role in carrying out,
10 and then deliberately concealing, the Fiesta Bowl's reimbursement scheme, it is at least possible,
11 and indeed likely, that Gary Husk knowingly and willfully violated 2 U.S.C. § 441f by assisting
12 in making contributions in the names of others. Although the complaint did not formally name
13 Husk as a respondent, we are in the process of notifying him in order to provide him with an
14 opportunity to respond. Based on the response received, if any, we will return to the
15 Commission with appropriate recommendations.⁹

16 **4. Other Conduits**

17 The complaint alleges that several subordinate employees, employee spouses, and others
18 violated 2 U.S.C. §§ 441b(a) and 441f by making federal contributions that were later
19 reimbursed with corporate funds. *See* Attachment 1. Several of these individuals were
20 interviewed during the Second Investigation and denied knowing that receiving reimbursements

⁹ As discussed above at p. 8, former CFO Stan Laybourne, who was also not formally named in the complaint as a respondent, may have received a \$15,000 bonus that he used to reimburse contributors. Final Report at 43-46. However, we are not notifying Laybourne given that his involvement appears to have occurred over six years ago and the fact that, according to Wisneski, Laybourne was "cut out of the reimbursement process" after raising concerns about the whether the activity could jeopardize the Fiesta Bowl's tax status. *Id.* at 52-53. Thus, it is likely that the pursuit of any violation by Laybourne (for a monetary penalty) would be barred by the statute of limitations.

1 for their contributions was unlawful. In response to the complaint, these conduits either concur
2 in the Fiesta Bowl's response (which reiterates their claims of innocence consistent with
3 information in the Final Report), assert that the Commission is time-barred from pursuing the
4 allegations, contend that the complaint is legally deficient, decline to respond, and/or request
5 dismissal. *See* responses of Jamie Fields, Peggy Eyanson, Lee Eyanson, Anthony Aguilar, Mary
6 McGlynn, and Monica Simental. (Scot Asher did not file a response.)

7 Although Eyanson and Aguilar were more than mere conduits, it appears that their
8 participation was under the direction of Fiesta Bowl officers; it also appears they fully
9 cooperated with counsel during the Second Investigation. Accordingly, consistent with the
10 Commission's usual practice regarding spouses and subordinate employees, *see* footnote 6, and
11 in light of their cooperation during Second Investigation, we recommend that the Commission
12 take no action at this time as to the allegations that Jamie Fields, Peggy Eyanson, Lee Eyanson,
13 Anthony Aguilar, Mary McGlynn, Monica Simental, and Scot Asher violated 2 U.S.C.
14 §§ 441b(a) and 441f.

15 **5. Corporate Resources Alleged to Have Been Used to Facilitate**
16 **the Making of Federal Contributions**
17

18 A corporation, including its officers, directors, or other representatives acting as agents of
19 the corporation, may not facilitate the making of a contribution by using its corporate resources
20 to engage in fundraising activities for any federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R.
21 § 114.2(f)(1). Officials or employees of a corporation are prohibited from ordering or directing
22 subordinates or support staff to plan, organize, or carry out fundraising projects as part of their
23 work responsibilities using corporate resources, without obtaining advance payment. 11 C.F.R.
24 § 114.2(f)(2)(i)(A). The Fiesta Bowl acknowledges that its resources and facilities were used to
25 support federal candidate fundraising activity, as indicated in the Final Report, but does not

1 specifically address the four events alleged in the complaint. Complaint at 6; Fiesta Bowl
2 Response at 2, 3 and 7.

3 The Final Report states that the Fiesta Bowl has hosted political fundraisers on its
4 premises, that it has catered such events without reimbursement, and that its employees have
5 worked at these fundraisers, for example, coordinating invitation lists and helping out during the
6 events. Final Report at 183-86. It appears that Fiesta Bowl employees may have carried out
7 fundraising activities as part of their normal work duties. Junker's assistant Kelly Keogh stated
8 that she did the "majority" of the work for the events, for example, sending invitations by
9 email.¹⁰ *Id.* at 185.

10 It is not clear, however, how many federal fundraising events the Fiesta Bowl hosted (if
11 any), since the Final Report appears to focus on events for nonfederal candidates. There is a
12 reference to an event for then-Congressman J.D. Hayworth in or around October 2006, but the
13 Final Report states only that Kelly Keogh was "attempting to schedule a fundraiser" for
14 Hayworth and provides no other information. As to the three other alleged fundraisers, the
15 complaint provides no supporting information, relying solely on "information and belief."
16 Complaint at 6.

17 Given the fact that two of the alleged federal fundraising events hosted by the Fiesta
18 Bowl would have occurred over five years ago, and the fact that we have no information
19 indicating that the two more recent events (in 2007 and 2008) were actually held, we recommend
20 that the Commission dismiss the allegation that The Arizona Sports Foundation, dba The Fiesta

¹⁰ Other than a reference in the Final Report to event invitations being sent to the "Fiesta Bowl family," *id.* at 186, we have little information at this time as to who may have received event invitations, and whether invitations or solicitations for contributions were made to individuals outside of the Fiesta Bowl's "restricted class," which would include its executives and administrative personnel and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(j) and 114.2(f).

MUR 6465 (Fiesta Bowl)
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Bowl, violated 2 U.S.C. §§ 441b(a) by using corporate resources and facilities to host fundraising events for federal candidates.

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MUR 6465 (Fiesta Bowl)
First General Counsel's Report

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seek authorization to issue subpoenas for answers to written questions, production of documents, and depositions directed to respondents and witnesses in this matter. We anticipate that the subpoenas would seek information regarding the involvement of other corporate officers and conduits in the reimbursement scheme. Accordingly, we request that the Commission authorize the use of compulsory process.


IV. RECOMMENDATIONS

1. Find reason to believe that The Arizona Sports Foundation, dba The Fiesta Bowl, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f in connection with the alleged reimbursed contributions.
2. Dismiss the allegation that The Arizona Sports Foundation, dba The Fiesta Bowl, violated 2 U.S.C. § 441b(a) by using corporate resources and facilities to host fundraising events for federal candidates.
3. Enter into conciliation with The Arizona Sports Foundation, dba The Fiesta Bowl, prior to a finding of probable cause to believe,
4. Find reason to believe that John H. Junker knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
5. Find reason to believe that Natalie Wisneski knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.


6. Find reason to believe that Shawn Schoeffler violated 2 U.S.C. §§ 441b(a) and 441f.
7. Take no action at this time as to the allegations that Susan Junker, Richard Wisneski, Jay Fields, Jamie Fields, Peggy Eyanson, Lee Eyanson, Anthony Aguilar, Mary McGlynn, Monica Simental, and Scot Asher violated 2 U.S.C. §§ 441b(a) and 441f.
8. Authorize compulsory process.
9. Approve the attached Factual and Legal Analyses.
10. Approve the appropriate letters.

Date _____


Anthony Herman
General Counsel


Stephen A. Gura
Deputy Associate General Counsel
for Enforcement


Peter G. Blumberg
Assistant General Counsel


Thomas J. Andersen
Attorney